



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 24, 1993

Mr. Mark E. Parker
Assistant Criminal District Attorney
McLennan County
219 North 6th Street, Suite 200
Waco, Texas 76701

OR93-579

Dear Mr. Parker:

The McLennan County Criminal District Attorney's Office (the "criminal district attorney") received a request for a report generated by the Office of the State Auditor during an investigation of Texas State Technical Institute (now Texas State Technical College), including "additional information regarding criminal activities which were not included in the report made public." You requested a decision of this office pursuant to section 7 of the Texas Open Records Act (the "act"), Government Code chapter 552¹, and claimed that sections 552.103(a), 552.108, 552.111, and 552.116 of the act except the requested information from required public disclosure. Because the decision in *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ) required reexamination of the section 552.111 exception, we allowed you an additional 15 days to submit arguments in accordance with the *Gilbreath* decision. We now address your claim that the information submitted to us for review is protected by sections 552.103(a), 552.108, 552.111, and 552.116 of the act. We have assigned your request ID# 18661.

You claim that section 552.116 of the act excepts the requested information from required public disclosure. Section 552.116 excepts "the audit working papers of the State Auditor." In Open Records Decision No. 580 (1990), this office held that the term "audit working papers" in section 552.116 is a term of art in the practice of accounting, referring to the documents containing the evidence supporting the auditor's findings, opinions, conclusions, and judgments. That decision overruled Open Records Decision

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg. ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

No. 164 (1977), which defined and applied the "audit working papers" exception narrowly. *See also* Open Records Decision No. 424 (1984).

The Office of the State Auditor has provided a brief supporting its contention that the requested information constitutes "audit working papers" within the meaning of section 552.116. Having examined the information submitted to us for review, we agree that the submitted documents constitute "audit working papers." Accordingly, the requested information may be withheld in its entirety under section 552.116 of the act. As we resolve this matter under section 552.116, we need not address the applicability of sections 552.103(a), 552.108, and 552.111 at this time.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosure: Submitted documents

Ref.: ID# 18661
ID# 18944
ID# 18976

cc: Mr. Thomas J. Blankenship
Route 8, Box 1314
Waco, Texas 76705
(w/o enclosures)

²We note that the information at issue here is not public merely because it was made available to the criminal district attorney. Generally, information which is not required to be disclosed to the public under the act may still be transferred between governmental bodies without destroying its protected status. *See* Attorney General Opinions H-917 (1976); H-683 (1975); H-242 (1974); Open Records Decision No. 424 (1984); *see also* Gov. Code § 552.007 (prohibiting selective disclosure of public information). We understand that the Office of the State Auditor provided the requested information to the criminal district attorney pursuant to section 321.016 of the Government Code, which provides that evidence of an illegal transaction found in the course of an audit of the State Auditor shall be made available to, *inter alia*, "the appropriate legal authority." Accordingly, this intergovernmental transfer of information does not subject the information to public disclosure.